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1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 43

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment  
: No. 742N/14

5 -against- :  
:

6 DANIEL RAMOS, :  
:

7 Defendant. : Jury Trial  
8 -----X

8 May 14, 2015  
9 262 Old Country Road  
Mineola, New York

10

B E F O R E:

11

12 HONORABLE TERESA K. CORRIGAN,  
Acting Supreme Court Justice

13

A P P E A R A N C E S:

14

(As Previously Noted)

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18 THE CLERK: Case on trial continued,  
19 Indictment Number 742N of 2014, People of the state New  
20 York vs. Daniel Ramos.

21 All parties are present. The Spanish  
22 interpreter, Carmen Knight, is present.

23 Are the People ready to proceed?

24 MR. PERRI: Yes, your Honor.

25 MR. BERGER: Yes.

kmm

1 A F T E R N O O N S E S S I O N

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-SEALED-

4

(Whereupon, this is an excerpt of the trial.)

5

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THE CLERK: Case on trial continued,  
Indictment Number 742N of 2014. People of the State of  
New York vs. Daniel Ramos.

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Let the record reflect all parties are  
present. The jury is not present at this time.

10

Are the People ready?

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MR. PERRI: Yes, we are.

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THE CLERK: Defense counsel ready?

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MR. BERGER: Yes, your Honor.

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THE COURT: At this point I just want the  
record to reflect we had a conference in my chambers  
over the lunch break, and we have agreed we would come  
out before we went back on the record with the jury and  
I would allow both parties to put their application  
and/or position on the record, because of the nature of  
what is about to be disclosed and discussed. This is  
going to be done on a sealed record.

22

23

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Additionally, I'm going to ask that the  
courtroom be cleared and that the courtroom be sealed  
just for this limited record that is about to be made.

25

Additionally, this record is not to be

## Proceedings

1078

1           unsealed except by order of this Court or a Court of  
2           competent jurisdiction.

3                       MR. BERGER: I would assume the record is not  
4           to be sealed, if the record is being prepared in the  
5           event there is a need for an appeal. All of this  
6           should be part of the record.

7                       THE COURT: At the point in time there is a  
8           need for an appeal, there will be an application for  
9           this portion to be unsealed, and it be unsealed at that  
10          time. I'm not going to cross a bridge before I get to  
11          it. For the purposes of today, this record is sealed  
12          as agreed to by all parties when we were in chambers  
13          prior to the lunch break. So, the record should now  
14          reflect the courtroom has been cleared.

15                      Mr. Berger, I'll hear from you.

16                      MR. BERGER: I'm not sure whether when we  
17           agreed to seal it that we agreed it would have to be  
18           unsealed by a Court order in the event the appeal is  
19           required. I'm making a motion for, I'm making a  
20           motion, obviously, in the event that there is a  
21           conviction, we do want this to be part of the record  
22           for appeal. We brought this matter to the attention of  
23           the Court to determine whether or not there would be a  
24           civil rights violation under Article 50. It appears to  
25           be at the conclusion of Judge Quinn, who is the

1 supervising judge of the Criminal Court, County Court  
2 here in Mineola, that we weren't running a civil rights  
3 violation. You had mentioned you wanted to seal it.  
4 I'm not exactly sure what you meant by that other than  
5 the fact other people shouldn't be in the courtroom  
6 when this application is being made, but I'm certainly  
7 not going to ask that the Court, if it's you or anybody  
8 else, has to approve of this application being revealed  
9 in the event there's a need to be an appeal. If that's  
10 the understanding, I'm not prepared to agree to that.

11 THE COURT: If there is a conviction in this  
12 case and an appeal is sought, I'm confident with a  
13 simple request this portion of the record will be  
14 unsealed. I don't know how it could not be unsealed if  
15 there was an appeal. So, for this sealing order to  
16 have any teeth and to protect the individuals that it  
17 needs to protect, it will be sealed unless a Court of  
18 competent jurisdiction agrees to have it unsealed. I  
19 can't imagine there would be a Court, knowing that  
20 there is a conviction, and an appeal would ever deny  
21 such a request, but I'm not going to order something  
22 that has absolutely no teeth and absolutely no bearing  
23 on anything by saying it's sealed just because I say so  
24 and whatever happens, happens. I'm not going to put  
25 the court reporter in the position of having to

1 determine whether or not there was a conviction or not  
2 a conviction when these minutes are ordered. In an  
3 effort to have this sealing matter and have teeth and  
4 in an effort to not put the onus on the court reporting  
5 staff to have to make a determination as to whether or  
6 not there was a verdict of guilty in this case before  
7 turning these minutes over, this application will be  
8 sealed except for the Court record, which will then  
9 have an unsealed, which I'm confident will be easily  
10 obtained should there be a conviction in this matter.

11 That being said, please make your  
12 application.

13 MR. BERGER: My intention was not to put the  
14 court reporter in a difficult position.

15 THE COURT: That would be the reality of it.

16 MR. BERGER: If anybody other than the  
17 attorney for the defendant should make the application  
18 in the event there is a conviction, certainly, the  
19 Court order -- I would expect the Court order to be  
20 required. But in the event it's only the defendant's  
21 attorney on an appeal, then we shouldn't have to agree  
22 to seal it. The Court understands that would be an  
23 appropriate time to unseal it so it could be part of  
24 the record.

25 THE COURT: That's all I'm saying. My ruling

1 with regards to the sealing stands at this time. There  
2 will be an order requiring an unsealing should there be  
3 a conviction in this case. Let's get to the  
4 application.

5 MR. BERGER: It has come to my attention,  
6 actually, yesterday, today is the first time I'm  
7 looking at the documents, is that the brother of the  
8 complainant in this case, was sexually abused when he  
9 was three years old. It turns out that our office  
10 represented him back in 2007.

11 THE COURT: Represented who?

12 MR. BERGER: The defendant, the brother, we  
13 obtained the files from our -- where we keep our  
14 disposed of files that are old in a warehouse, I  
15 believe. And we learned that the complainant in that  
16 case was, according to the felony complaint -- let me  
17 say the defendant in that case, on or about the 25th  
18 day of August of 2007, at about three o'clock in the  
19 morning, at the residence of Crystal Ramirez and her  
20 son, the complainant alleges that the defendant did  
21 subject the three-year old male victim to sexual  
22 contact in attempt to put the victim's mouth on his  
23 erect penis while lying on his back. The defendant did  
24 push the victim's face to the penis and made contact  
25 with the victim's face. The complainant in this case

1 is Crystal Ramirez. That's how it is listed in the  
2 complaint, even though she is not actually the victim.  
3 While in the room watching television, did hear the  
4 victim make a whining noise. I point out for the  
5 record, hear, is spelled H-E-R-E, when it was intended  
6 to be H-E-A-R. The complainant did turn toward the  
7 Futon and observed the defendant's penis out of the  
8 boxer shorts and making contact with her son's face.  
9 The complainant immediately removed the victim from the  
10 bed and room.

11 Attached to the complaint is a statement by  
12 Crystal Ramirez, in which she says she observed the  
13 defendant with his penis exposed, attempting to force  
14 her son to perform oral sex on him. She says, I  
15 immediately got up and yelled at him, at him being the  
16 defendant, and I explained everything to my  
17 ex-boyfriend, Christian Feliciano, and I think this  
18 statement is a mistake, because it's not intended to --  
19 Christian Feliciano, who is the father of the two  
20 children here, but rather his brother. Not mentioning  
21 his name at this point, he's our client. I don't know  
22 that it's actually necessary for me not to mention his  
23 name. Actually, I probably should put it on the  
24 record, Alex Feliciano. She says I called the police,  
25 he ripped the phone off the wall, pulled my hair and

1       tore my shirt. She says Christian had attempted, but I  
2       don't think it's Christian, I think it's Alex attempted  
3       to take all of the food out of the refrigerator, but  
4       during the ensuing argument, the bag ripped, and the  
5       food was thrown and kicked everywhere. I did not give  
6       anyone permission to damage my property or abuse my  
7       son, and I want those responsible arrested.

8               When we learned that yesterday, the facts  
9       there are so eerily similar to what is alleged here. I  
10      was not aware that Crystal Ramirez was actually  
11      observing what Alex did, the defendant did to her son.

12             So, here we have a situation in which she is  
13      in some way responsible, at least she could certainly  
14      feel that way, that she is allowing this individual or  
15      hosting this individual, he's in her house, he's  
16      sleeping in her Futon at three o'clock in the morning.  
17      She is watching television, and he's engaging in this  
18      kind of behavior with her son. I'm sure there's  
19      responsibility or guilt on her part that she is there.  
20      She wasn't monitoring the situation in any case. This  
21      is terribly traumatic to her.

22             Our position is that having gone through this  
23      experience before, and it appears from what she sees  
24      when she walks into the kitchen, this case, that  
25      something similar may be going on as to what had



1 happened before. We should be able to demonstrate to  
2 this jury that this woman had experienced this  
3 traumatic situation before, that her frame of mind was  
4 such that she's assumed this may be going on again, if  
5 this were not something she had engaged in before, but  
6 just happened to be the mother of a victimized child,  
7 there would be a difference.

8 But this is so eerily similar that you  
9 couldn't be a mother and not have reacted emotionally,  
10 and our position is not carefully -- she did react  
11 hastily and emotionally, and may have come to a  
12 conclusion. Whether or not this is true, the jury  
13 should be able to know this fact. There cannot be a  
14 distinction made on the basis of differences that are  
15 not significant. What is significant, is that this  
16 woman, Crystal Ramirez, observed it then and while she  
17 didn't observe sexual abuse this time, her reaction  
18 should be known to the jury to determine whether or not  
19 she acted appropriately and fairly here.

20 We know that the children were going to  
21 therapy. We had subpoenaed those records. Your Honor  
22 had looked at those records. What's interesting to me  
23 and has never been answered is, both children were  
24 going when Mya had not even been born yet when this  
25 happened. So something in the records that were

1 provided to you compelled someone to determine Mya, as  
2 well as Sincere, should be going to therapy. Why that  
3 was happening, your Honor, made a determination that  
4 we're not entitled to see it. We weren't so much  
5 interested in the psychiatrist or psychologist  
6 treatment plan. We were interested in what trauma or  
7 what reasons the kids were going -- as to whether it  
8 bears any relationship as to what happened here.

9 I know you provided me with one page of  
10 something that happened about a week or so later, but  
11 my position is that what was happening before when the  
12 defendant and Crystal Ramirez -- withdrawn. When  
13 Crystal Ramirez admitted that the kids were going to  
14 therapy, we say there's a reasonable chance that it has  
15 a bearing upon what Mya and what her state of mind was  
16 under the circumstances. You have a woman who,  
17 according to Mya, physically abused this six-year old  
18 girl, and our position is that I don't see how the  
19 trier of the facts, when evaluating what Crystal  
20 Ramirez had to say, shouldn't know that this woman went  
21 through this similar type of experience before. Her  
22 state of mind, when she is reciting under oath to this  
23 Court what she went through that day, is certainly  
24 important. It's a principle of law. It's a matter of  
25 law that the state of mind of an individual who's

1       stating what they observed, what they saw, or tasted or  
2       felt, or heard, their state of mind is so significant  
3       to whether or not they are accurately reporting  
4       anything.

5               So, I don't understand why we're making a  
6       point here that this woman has experienced the trauma  
7       before and now is, from her perspective, perhaps  
8       viewing it again; why that is not relevant to the trier  
9       of the facts.

10              We're asking the Court to recall Crystal  
11       Ramirez for me to be able to question her concerning  
12       this experience. It goes without saying since we  
13       brought this to the Court's attention, any civil rights  
14       protections we will honor, but we're not asking to call  
15       Mya. We're not asking to call Sincere. We're going to  
16       call just Crystal Ramirez.

17              THE COURT: People.

18              MR. PERRI: Thank you, your Honor.

19              First, just the People would like to clarify  
20       some of the facts that were asserted by defense counsel  
21       repeatedly, and the People have a letter application  
22       with regard to this defense counsel repeatedly  
23       characterizes Crystal Ramirez as a physically abusive  
24       parent. The only testimony with regard to that is from  
25       Mya that she was whooped by her mother when she was

1 bad. There is no testimony in the record saying that  
2 she exceeded her statutory rights to discipline her  
3 child.

4 With regard to the disclosure of this  
5 information, defense counsel has had constructive  
6 possession of all of the information he just recently  
7 came into physical possession of throughout the  
8 pendency of this case.

9 Additionally, defense counsel was made aware  
10 on Monday of the name and the relationship between the  
11 defendant, Alex Feliciano and Sincere Feliciano  
12 Ramirez.

13 Defense counsel also stated we did not know  
14 both children or why both children were going to  
15 therapy, especially since Mya was not born at the time  
16 therapy occurred. In fact, your Honor did state and  
17 the People offered in response to the subpoena, there  
18 was an additional domestic violence incident that also  
19 required the children to go to therapy.

20 With respect to defense counsel's immediate  
21 application, the Supreme Court of the United States in  
22 Delaware vs. Argues, 474 US 15, stated that at the time  
23 the confrontation clause guarantees opportunity for  
24 effective cross-examination, not cross-examination  
25 that is effective in whatever way and to whatever

1 extent the defense might wish it to be. Defense  
2 counsel's application to cross-examine, whether it is  
3 Sincere, whether it is Crystal Ramirez, whether it be  
4 Mya or anyone else, to bring before this jury evidence  
5 about a prior conviction that was eight years before  
6 the alleged incident that took place in this case,  
7 where there is nothing despite defense counsel's  
8 assertion to question presently before the Court or  
9 anyone on the 32-B filed in connection with the felony  
10 complaint relating to Alex Feliciano, where the  
11 defendant, Alex Feliciano, pleaded guilty to the top  
12 count, attempted criminal sexual act in the first  
13 degree. And when there is no eerily similar factual  
14 scenario except for, unfortunately, Crystal Ramirez was  
15 previously present in the same apartment where a  
16 different child was victimized eight years ago.

17 The facts are strikingly different in that  
18 the prior case she states that she viewed the defendant  
19 actually make contact between his penis and the face of  
20 the child as opposed to, in this case, she has never  
21 testified that she viewed the actual sexual act. Never  
22 testified that he nor would she be permitted to testify  
23 that she actually believed sexual abuse occurred to her  
24 child. She testified in limited capacity to the fact  
25 she observed and to the knowledge that she had as a

1 witness in this case.

2           Regardless of the fact that she previously  
3 observed eight years earlier, the People believe it  
4 does not support the speculation and conclusion that  
5 she is incapable of perceiving reality, of having the  
6 ability to distinguish between historical events and  
7 what she is presently viewing. That assertion by  
8 defense counsel is pure speculation, not based upon any  
9 diagnosis, any psychological study or evidence in any  
10 shape or form before the Court to consider. The  
11 defense does not have the absolute right to  
12 cross-examine endlessly. This has been established in  
13 the State of New York in People v. Francisco, 44 AD  
14 870.

15           In that case the Second Department stated  
16 that the right is not limited and the trial Court has  
17 broad discretion to limit the scope of  
18 cross-examination when the questions are irrelevant or  
19 only marginally relevant concerning collateral issues  
20 or pose a danger and misleading the jury.

21           Additionally, the Second Department in People  
22 v. Hicks, 88 AD3d 817, in 2011, noted that all  
23 cross-examination must be based upon a good faith basis  
24 that must perceive. And it's the People's position  
25 there is no good faith basis presently before the Court

1 or in possession of defense counsel that necessitates  
2 the conclusion that simply because Crystal Ramirez's  
3 other child, when he was three years old, was  
4 victimized by a separate individual that that then  
5 allows for the logical jump to she is no longer able to  
6 be a credible witness, or that is even presently still  
7 in such a traumatic state present in her mind that is  
8 effecting her to this day.

9 That the Second Department in People v. Cato,  
10 58 AD3d, 394, noted completely proper to limit  
11 cross-examination when even -- when motive to fabricate  
12 evidence. And in People v. Garcia, 47 AD3d, 830, also  
13 in looking at motives of a prosecution witness to  
14 possibly lie, or to fabricate, or not be able to  
15 testify credibly. It was noted by the Court when  
16 evidence is too remote or speculative of motive to  
17 fabricate, the trial Court may in its discretion  
18 exclude such proof and the Second Department upheld the  
19 trial Court's decision to do so.

20 And, again, noticed in that same holding, in  
21 that a good faith basis, more than speculation, had to  
22 be behind the desire to cross-examine on a specific  
23 issue.

24 In People v. Walsh, 35 AD, 637, even when  
25 there was an interaction or some evidence in that case,

1 it was a possible assault between the complainants,  
2 between the witnesses the People put forth, the Court  
3 properly limited cross-examination as even though there  
4 was some prior criminal events that related the various  
5 witnesses. It was speculative at best that there then  
6 was a factual basis to believe it affected their  
7 ability to testify credibly.

8 The People would also like to note that there  
9 is no right by defense counsel to recall witnesses.  
10 It's left to the trial Court's discretion. That is  
11 pursuant to People v. Gibson, 106 AD3d, 834, wherein  
12 the Court held that the defendants -- the Court  
13 probably exercised its discretion, and did not deprive  
14 the defense of rights to confrontation or  
15 cross-examination simply by denying their request to  
16 recall a witness.

17 In People vs. Alicea, A-L-I-C-E-A, 33 AD3d,  
18 326, the First Department, in reaching the  
19 determination that denying an application to recall  
20 witnesses was properly noted. That further  
21 cross-examination based on newly acquired -- I'm sorry,  
22 withdrawn.

23 That this was a case about defense  
24 contention, stating that newly acquired information  
25 necessitated the ruling of a witness, but the Court



1 noted in making a determination it was not necessary  
2 that the information could have been obtained by the  
3 defense earlier in the proceedings. That it was only  
4 marginally related to cross-examining and exploring and  
5 actual credibility issues of the witnesses. And the  
6 legitimate other concerns in that case was the safety  
7 of the witnesses' guide to the Court to not have the  
8 witnesses recalled and deny the defense's application.

9 In making the decision, your Honor, in  
10 exercising your discretion, I ask you to deny defense  
11 counsel's application.

12 In People v. Simmons, 106, AD3d, 115, of  
13 2013, where it did note that in making a determination  
14 goes with cross-examination in connection with  
15 confidentiality, or in this case, it was rape shield  
16 law. There is a balancing test that goes on whether or  
17 not Sincere is actually called to testify his identity  
18 as a victim as a sexual assault case will be presented  
19 in public to the jury, that there is no way around  
20 imposing upon those rights that guarantee Sincere a  
21 victim of a sex crime whether or not Crystal is still  
22 issued, should consider and wait.

23 It's the position -- this is the same  
24 application that defense previously raised with you and  
25 that the only difference there is more, there is

1 slightly more information in their possession.  
2 However, that information is not -- does not go  
3 directly to the credibility of the witness. Crystal  
4 Ramirez's complaint led to the commission of a C  
5 violent sex felony. There's nothing in her complaint,  
6 or in the statement or conviction of Alex Feliciano  
7 that actually imputes her credibility. Thank you.

8 MR. BERGER: I don't know the DA was  
9 listening to what I said. There is something different  
10 here. We did not know that Crystal viewed this  
11 incident, number one. Number two, Mr. Perri cites all  
12 kinds of cases about -- first of all, he says that the  
13 basis is that I am saying based upon that experience  
14 she can't distinguish reality from fiction. That's not  
15 a point I made. That's a point I made up on the record  
16 on some other issue much before that. Then he cites  
17 all these cases on motive to fabricate. I didn't say  
18 anything about motive to fabricate. Why he says it is  
19 totally irrelevant.

20 Then he makes the point, I could have gotten  
21 this information before. That's not accurate, because  
22 there was no reason for me to know to get this before,  
23 until we were able to get the file. If it hadn't been  
24 for the fact we represented Alex, although years ago we  
25 never would have gotten this information. We now get

1 the information, his name and present it to the Court  
2 and you notice Mr. Perri didn't cite any cases that the  
3 state of mind of the witness is not important when that  
4 witness testifies. It's extremely important. That's  
5 what goes on when the Courts make a determination as to  
6 whether a witness can testify, if they're competent  
7 enough to testify, what their frame of mind is, what  
8 their state of mind is. That's the point I was making.

9 Finally, Judge, this kind -- I mean, nobody  
10 is saying there's necessarily a right to recall a  
11 witness. When the Court is exercising its power as a  
12 neutral arbiter of the issues that go before in a  
13 trial, it has to consider the interest of justice. Are  
14 the rights to keep Sincere's victimization a secret  
15 greater than that of a defendant who is on trial for a  
16 B felony? I don't think so. I mean there comes a  
17 point where you may have to make a decision between two  
18 very difficult decisions, but when somebody is on  
19 trial, it's not a difficult decision from my  
20 perspective. I don't think it would be a difficult  
21 perspective and anybody's perspective when you have  
22 somebody on trial for a very serious charge versus  
23 somebody who has gone through the experience years ago  
24 and probably doesn't want to relive it again. I  
25 understand that. He's not being asked to relive it

1 again. There is no risk here to Sincere except that  
2 the 13 people are now waiting on a jury who would know  
3 about it. They would know about it, but on the other  
4 hand, the rights of the defendant, who is accused of a  
5 crime, are paramount.

6 THE COURT: Let me ask you a question. I  
7 appreciate that you're saying state of mind is  
8 important. I don't disagree with you. State of mind  
9 is always important when a witness takes the stand.  
10 What I'm trying to understand and comprehend from you,  
11 sir, are you saying this woman's state of mind is  
12 important because, in fact, this traumatic event that  
13 happened years ago has given her a reason to take the  
14 stand and lie about what happened in this case because  
15 it is your defense that it is all made up; is that  
16 correct?

17 MR. BERGER: It is, but that's not what I'm  
18 saying about this woman's state of mind.

19 THE COURT: Her state of mind is relevant --  
20 if it's not relevant because she got on the stand and  
21 lied, is it relevant because she got on the stand and  
22 told the truth, because it has to be one or the other.

23 MR. BERGER: No, it doesn't. The point is,  
24 she could be mistaken. What I'm saying to you, she  
25 took certain actions which no one knows what action she

1           took. We weren't there. She was there, Crystal -- I  
2           mean, Mya, was there and her son was there. She did  
3           certain things that day that I say influenced her which  
4           influenced the complainant's in this case, Mya. That  
5           becomes important. Those hours or those minutes that  
6           occurred subsequent to her walking into the kitchen  
7           became very important as to what she did, how she  
8           behaved. It's a product of her history of what she has  
9           gone through, and we, as the defendant here, should  
10          have the right to challenge whether or not she told the  
11          truth, challenge whether or not she acted improperly  
12          influencing Mya. All of those things should be open to  
13          the defense when we argue to the jury here.

14                       It's not a matter of you're asking me whether  
15          or not I'm going to argue that she had lied or not  
16          argue that. That should not be dispositive of the  
17          issue. The issue should be determined. I should be  
18          able to make the arguments I want to make to this jury  
19          based upon all of the facts that occurred. This is a  
20          fact that occurred for this woman. For Mr. Perri to  
21          argue it's eight years ago and, therefore, it's  
22          irrelevant, it is nonsense.

23                       THE COURT: Thank you, counsel. I've given  
24          both enough time to speak. I'll make my ruling at this  
25          time.

1 First, the Court is absolutely aware that  
2 state of mind of a witness is always relevant, but the  
3 case law is very clear that that which relates to state  
4 of mind, if not too remote becomes relevant when an  
5 individual testifies. This is an action that the Court  
6 is aware happened six years prior to the incident and  
7 just about eight years prior to her testimony here on  
8 the stand.

9 The Court notes that the witness, which is  
10 Crystal Ramirez, the mother of the child in this case,  
11 in the incident from 2007, when putting forth her  
12 observations, in fact, had those observations credited  
13 by the fact that a plea of guilty was entered. If, in  
14 fact, the Court allowed such remote evidence to be put  
15 forth before this jury now, there is a very good  
16 possibility that improper bolstering of her credibility  
17 would result because the People would have the right to  
18 then say that which you observed resulted in a plea of  
19 guilty, correct, or words to that effect, and the jury  
20 would then know that what she said she saw in 2007 was,  
21 in fact, accurate, because somebody was convicted and  
22 sent to prison for it.

23 In this case, we don't have Crystal Ramirez  
24 saying she saw anything. We have her saying that she  
25 was told something by her child. The only reason that

1 came out was to show her next steps, which was to call  
2 911 to have the police arrive and to go to the  
3 hospital.

4 Additionally, that which happened back in  
5 2007, happened at a point in time when Crystal Ramirez  
6 did not even have the child that is the victim in this  
7 case. That child was not born yet. It is extremely  
8 remote in time, and if it's not being offered to show  
9 that she has made this up, and isn't credible and it's  
10 shown -- then it has to be shown for another reason.  
11 Either it's shown to show that her state of mind is  
12 such that this event didn't happen, in which case that  
13 would mean it's a lie, then what happens is she is  
14 improperly bolstered because that which happened  
15 previously turned out to be true.

16 If it's something other than that, again, the  
17 Court would have to allow the People go down the  
18 slippery slope of a remote action, possibly having an  
19 impact on an individual testifying here today. That is  
20 highly speculative. That is not required by the law.  
21 In fact, it is frowned upon, and the Court does note  
22 some of the cases that were provided to me by the  
23 People.

24 I want the record to reflect I did give both  
25 counsel an opportunity to present to this Court any

1 cases they wanted to. I think it is relevant that the  
2 case of Garcia from the Second Department at 47 AD3d,  
3 830 says, while extrinsic proof tending to establish a  
4 motive to fabricate is never collateral and may not be  
5 excluded on that ground, when the evidence is too  
6 remote or speculative of a motive to fabricate, the  
7 trial court may, in its discretion, exclude such proof.

8 Now, I have that as my base and have  
9 Mr. Berger saying it's not about her motive to  
10 fabricate, it's about her actions. Her actions are not  
11 on trial. What we all seem to be forgetting in this  
12 case is that subsequent to this child going to the  
13 hospital there is a statement by the defendant, and  
14 there is DNA evidence that points to this defendant as  
15 the potential perpetrator of this crime. That is  
16 something the jury will have to decide. The Court  
17 doesn't get to make that decision. The Court certainly  
18 gets to look at all of the evidence before it in making  
19 a determination as to whether or not a matter is so  
20 completely collateral that it would tend to confuse the  
21 jury or even, more so in this case, prolong a trial  
22 unnecessarily and bring forth evidence that is to do  
23 nothing more than to make a witness relive a traumatic  
24 event from at least six years ago, from the time of the  
25 incident, eight years, from the time of testimony. I



Proceedings

1100

1 am not going to allow that to happen. I don't see it  
2 as recent in time, which is what -- the statement of  
3 mind cases, both civilly and criminally point to in  
4 allowing any witness to testify about recent events  
5 that impact on their testimony.

6 The Court notes that those cases say that  
7 there must be some evidence that those recent events  
8 are impacted on their testimony. I don't have recent  
9 events here. I have events from 2007. I don't have  
10 anything before me that shows we impacted on anyone's  
11 testimony. In fact, what I now have before me is proof  
12 that what was seen and observed in 2007, was, in fact,  
13 truthful and accurate because there was a plea of  
14 guilty related to it. It's this Court's concern that  
15 if it would occur, if Ms. Ramirez, should I allow such  
16 testimony to go in, for all of the reasons I stated, I  
17 will not allow this testimony.

18 The defense application is denied.

19 MR. BERGER: For the record, if I want to  
20 allow a witness testifying for the other side to  
21 bolster her testimony, that's my problem. That's my  
22 risk. That's my opening the door. If I do that, and  
23 I'm helping the police, the prosecution, rather, so be  
24 it. That's a determination I should be able to make,  
25 not you. When the prosecutor wants to bolster his own

## Proceedings

1101

1 witness, yes, I make objections to that. Normally, the  
2 state doesn't allow bolstering. If I'm going to do it  
3 because there's a benefit for me, that should be my  
4 problem, not yours.

5 Secondly, you assumed my arguments that I was  
6 going to make, when I discussed Crystal in summation.  
7 You determined I was going to be fabricating or doing  
8 something, whatever. The Court doesn't have the right  
9 to assume the arguments I'll make. All the Court  
10 should be determining is whether or not her state of  
11 mind becomes relevant in making observations. What you  
12 are saying is too remote.

13 Let me tell you, you could have a traumatic  
14 experience twenty years ago and it not be too remote.  
15 It could still be staying with you. Recent, you now  
16 read cases about recent. Recent could be years and  
17 sometimes it is not recent enough if it's a week. You  
18 could make it anyway you like.

19 THE COURT: Did you bring a single case that  
20 shows me state of mind and recent twenty-year timeframe  
21 or sick-year timeframe is actually relevant? I have to  
22 tell you, again, only because I'll make the record as  
23 complete in reading Prince Richardson on evidence under  
24 state of mind in addition to other areas on witnesses  
25 and their testimony. There's not a single case listed

1 in civil or criminal where it was allowed to be  
2 discussed in a timeframe that was six years or greater.  
3 All of the timeframes listed were -- some of them were  
4 hours, some were days, some were weeks. One case I  
5 read was two months, nothing longer than that.

6 Again, we can talk about this until we're  
7 blue in the face. I want you to put your exceptions to  
8 my ruling on the record so the record is protected and  
9 then I want to proceed with this trial.

10 MR. BERGER: One last point.

11 THE COURT: Go ahead.

12 MR. BERGER: It doesn't require the case for  
13 the trier of the facts to look at somebody's experience  
14 and see if they were in a war and they had trauma that  
15 can -- they could still be suffering post-traumatic  
16 distress order. It takes somebody to make a  
17 determination for common sense. Yes, one could still  
18 suffer from traumatic experience years earlier. You  
19 don't need a case to point that out. You need a case  
20 when you arrest somebody and want to show up and you  
21 have a determination within minutes or hours as to  
22 whether they showed up within the appropriate period of  
23 time. Those are limited cases on specific areas of law  
24 that require the courts to make a determination.

25 And finally, Judge, it is totally irrelevant

## Proceedings

1103

1 for you to consider the DNA evidence or statement when  
2 making a determination here. What you are saying by  
3 using that is you feel the evidence is overwhelming at  
4 this point.

5 THE COURT: It doesn't matter what I feel.  
6 It's up to how the jury feels. I only have to make a  
7 legal determination, and I get to use whatever evidence  
8 and information is before me to make that legal  
9 determination, counselor. At the end of the day, you  
10 want to put in that it is extremely remote. I have  
11 asked you what is the purpose of putting in that  
12 testimony. You have not really stood firm on either,  
13 because either it's testimony that makes this witness  
14 not able to recall and recount a truthful statement,  
15 i.e., a fabrication, which is what you told by your  
16 defense is, in this matter. You didn't make that up,  
17 or it's the fact that she's credible because, in fact,  
18 the reality of what happened then was proven to be so  
19 through a verdict of guilty. Neither one of those  
20 positions has, for allowing me to let you go into this  
21 testimony, so I am not going to allow it at this time.

22 MR. BERGER: You are assuming you know the  
23 purposes. I want this in for --

24 THE COURT: Counselor, you have to tell me so  
25 I can make a legal determination. I've heard from you.

1 I heard what you said.

2 MR. BERGER: Her state of mind becomes  
3 important how I use that to the jury. It is not for  
4 you to guess at now. I should be able to use it in the  
5 way I see fit. If you think her state of mind is not  
6 important in this case, I understand you will make that  
7 determination. But to go in and decide because there's  
8 DNA here and confession here, that should in any way  
9 affect your judgment if there is no DNA here, and no  
10 so-called confession would you then allow it. I don't  
11 think that DNA and statement are at all relevant to  
12 your determination on this issue.

13 THE COURT: My determination on this issue  
14 with regards to your request that this testimony be  
15 allowed because it goes to state of mind without any  
16 further explanation, is denied by the Court as being  
17 too remote, in addition to all of the other reasons why  
18 the Court doesn't have to allow this testimony in.  
19 That's the end of the discussion.

20 Let's call the jury in.

21 (Whereupon, a short recess was taken.)

22 (Whereupon, the jury entered the courtroom.)

23 THE CLERK: Do both sides stipulate all sworn  
24 jurors are present?

25 MR. PERRI: Yes.